

REMARKS

Reconsideration and allowance in view of the foregoing amendment and the following remarks are respectfully requested.

Claims 1, 3-6, 8-13, 15-16 remain pending in this application. Claims 2, 7, 14 and 17-20 have been cancelled without prejudice to applicant's rights to file a divisional application. Claims 1, 4, 10, 11 and 15 have been amended. Support for the amendments to the claims is found throughout the specification, including for example the discussion around FIGURE 1B in paragraph [0050]. The terms wristbands and bands are used repeatedly in the specification.

The amendments to claims 1, 11 and 15 includes the recitation of a receipt portion, support for which is found in paragraph [0034] and FIGURE 1 of the application.

Claims 1-16 have been rejected by the Examiner under 35 U.S.C. 102(b) as being anticipated by Langan et al. US patent 5,482,753. Reconsideration and withdraw of the rejection is earnestly solicited.

"A claim is anticipated if each and every element as set forth in the claim is found, either expressly or inherently described, in a single, prior art reference." Verdegaal Bros. V. Union Oil Co., of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ...claim." Richardson v. Suzuki Motor, Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Langan et al do not disclose the use of a wristband or band or the inclusion of a receipt portion as now recited in each of the independent claims. Langan et al. cannot be

modified as there is no teaching of a band or wristband in the construction described in the cited reference.

With respect to the comments by the Examiner regarding claim 7 “that patentable novelty cannot be principally predicated on mere printed matter...” see In re Gulack 703 F.2d 1381, 1385, 217 USPQ 401 (CAFC 1983). “Difference between an invention and the prior art cited against it cannot be ignored merely because those difference reside in the content of the printed matter. Under section 103, the board cannot dissect a claim, excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable. The claim must be read as a whole.” “Printed matter may very well constitute structural limitations upon which patentability can be predicated....The limitations of claim 36 are not remotely suggested by Reid.” In re Royka, 180 USPQ 580, 583 (CCPA 1974). The inclusion of a receipt portion is a structural limitation of the business form and cannot be simply discarded merely because it may include “mere printed matter.”

The Examiner has rejected claims 11, 12 and 15 and has indicated that various structural limitations contained in the claims “are merely statements of intended use and do not distinguish over the prior art.” Applicant respectfully disagrees and the limitations provided in the claims are an entirely appropriate limitation that must be considered in making a determination by result, namely the use of the postcard as an event response card. In this regard, attention is directed to In re Halleck, 164 USPQ 647, 649 (CCPA 1970):

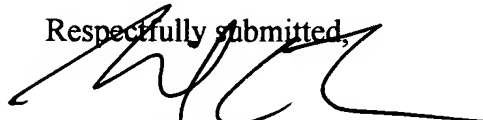
“The claims were also rejected by the examiner as ... the claims failed to set out specifics regarding proportions of substances to be used. We have set out above our view that the ‘exact point’ of novelty lies in the discovery that the agents in question stimulate growth in animals, not in the amount used other than that it be an amount

effective to stimulate growth. The functional term 'an effective amount... for growth stimulation' is not objectionable where the amount as such is not critical and its use has been approved in many cases. See In re Caldwell, 50 CCPA 1464, 319 F.2d 254, 138 USPQ 243 (1963)."

Here the functional use of the postcard is a limitation that the Examiner must consider as it further defines the scope of the claim and to provide patentable features over the prior art.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance and an early Notice to that effect is earnestly solicited. The Examiner is encouraged to contact the undersigned in the event any small matters remaining outstanding so as to eliminate the necessity of another action and response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael C. Maier', written over the typed name.

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